DATE: JUNE 14, 2011
TIME: 10:15 A.M.

Thomas W. Bauer, Esq.
Attorney for Defendant
42 Catharine Street
The Carriage House
Poughkeepsie, NY 12601
(845) 452-5076
Thomas W. Bauer, Esq. (TB8601)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
---x
In re

DONNA MARIE FRALEIGH, Chapter 7

Debtor. Case No. 10-36282(CGM)

---x

BRIAN FRALEIGH,
Plaintiff, Adv. Proc. No. 10-09091(CGM)

- against -

DONNA MARIE FRALEIGH,
Defendant.
---x

NOTICE OF MOTION FOR AN ORDER HOLDING PLAINTIFF IN CIVIL CONTEMPT FOR REFUSING TO COMPLY WITH THIS COURT'S ORDER; TO COMPEL PLAINTIFF TO COMPLY WITH THIS COURT'S ORDER; AND REQUEST FOR SANCTIONS PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 9014 AND 9020

PLEASE TAKE NOTICE that upon the Motion of the Defendant, Donna Marie Fraleigh, by her attorney, Thomas W. Bauer, Esq., the undersigned will move this Court at the U.S. Bankruptcy Court, 355 Main Street, Poughkeepsie, New York, on the 14th day of June, 2011 at 10:15 a.m., or as soon thereafter as counsel can be heard, for an Order:

(a) pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9014 and 9020, finding the Plaintiff in civil contempt for refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011;

(b) pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9014 and 9020, to compel Plaintiff to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011 and that if Plaintiff does not comply with this payment within seven days, then Plaintiff's complaint against Defendant shall be dismissed; and

(c) pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9014 and 9020, to award Defendant sanctions in the amount of $1,100.00, and that if Plaintiff does not comply with this payment within 30 days, then Plaintiff's complaint against Defendant shall be dismissed; and

(d) for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 9006-1(b), answering affidavits or opposing memoranda of law must be served no later than three (3) days prior to the return date of the motion.

Dated: April 26, 2011
Poughkeepsie, New York

_/s/ Thomas W. Bauer____
Thomas W. Bauer, Esq.
Attorney for Defendant
42 Catharine Street
The Carriage House
Poughkeepsie, NY 12601
(845) 452-5076
Thomas W. Bauer, Esq. (TB8601)

Thomas W. Bauer, Esq.
Attorney for Defendant
42 Catharine Street
The Carriage House
Poughkeepsie, NY 12601
(845) 452-5076
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x

In re

DONNA MARIE FRALEIGH,		Chapter 7
	Debtor.	Case No. 10-36282(CGM)

---x

BRIAN FRALEIGH,		
	Plaintiff,	Adv. Proc. No. 10-09091(CGM)
- against -		
DONNA MARIE FRALEIGH,		
	Defendant.	

---x

MOTION FOR AN ORDER HOLDING PLAINTIFF IN CIVIL CONTEMPT FOR REFUSING TO COMPLY WITH THIS COURT'S ORDER; TO COMPEL PLAINTIFF TO COMPLY WITH THIS COURT'S ORDER; AND REQUEST FOR SANCTIONS PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 9014 AND 9020

The motion of the Defendant Donna Marie Fraleigh, by her attorney Thomas W. Bauer, Esq., respectfully represents:

1. This Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. § 1334(b) and the "Standing Order of Referral of Cases to Bankruptcy Judges of the Southern District of New York" dated July 10, 1984 (Ward, Acting C.J.). This matter arises in a case under title 11 and is a core proceeding as provided by 28 U.S.C. § 157(b).

2. The Defendant filed with this Court on April 30, 2010, a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

3. Prior to the filing of the petition, Defendant separated from Plaintiff due to Defendant obtaining an Order of Protection against Plaintiff because of Plaintiff's attempt to cause severe injury to Defendant by his crashing his motor vehicle head on into two different telephone poles with Defendant as a passenger, for which Plaintiff was convicted of Reckless Endangerment in the 2nd Degree.

4. Plaintiff and Defendant have been through a divorce and multiple lengthy support hearings. Upon information and belief, in 2009 Plaintiff had a downward modification petition against Defendant. Plaintiff withdrew his downward modification petition due to the presiding Family Court Judge inferring that an award of approximately $165.00 per week as support would be the result if Plaintiff proceeded. Soon thereafter, Plaintiff re-filed the same downward modification petition in Dutchess County Supreme Court. Plaintiff now only pays $66.00 per week for two teenage children.

5. In 2010, Plaintiff had withdrawn another downward modification petition against Defendant because he failed and refused to submit the proper income and expense records to the Defendant and/or the Court.

6. Upon information and belief, in a further subsequent 2010 downward modification petition, Defendant refused to respond to legal discovery requests because Lisa Hartley, Esq. was the attorney for the Plaintiff, supported the Plaintiff, and was also to be a witness in the same matter, causing a conflict of interest.

7. Upon information and belief, Lisa Hartley, Esq.'s insistence that she is Plaintiff's attorney in the 2010 support matter, even though she lives with the Plaintiff, supports him, and was

to be called as a witness in the matter, caused the case to be recused by all Dutchess County Family Court Judges and to be moved to Orange County Family Court.

8. Post-petition, by letter dated May 6, 2010, Defendant filed a complaint with the State of New York Grievance Committee for the Ninth Judicial District against Plaintiff's girlfriend Lisa Hartley, Esq. for representing Plaintiff while having an intimate relationship with him.

9. Plaintiff filed an Application for Fed. R. Bankr. P. 2004 Exam on July 1, 2010.

10. Pursuant to this Court's direction, after the hearing held July 27, 2010, in which this Court granted the 2004 Exam Order and told the parties to work the matter out between them because children were involved, the Defendant approached Plaintiff. However, Defendant was told by Plaintiff's attorney Andrea B. Malin, Esq., that it was too late to work anything out.

11. On September 16 and 28, 2010, Plaintiff conducted a Fed. R. Bankr. P. 2004 Exam pursuant to Court Order dated July 30, 2010. Plaintiff brought Lisa Hartley, Esq. into the examination room in order to be present as co-counsel. Defendant objected to Lisa Hartley, Esq. being co-counsel due to the afore-mentioned conflicts of interest and as an attempt to harass and intimidate the Defendant.

12. Plaintiff filed a complaint against the Defendant pursuant to §§ 523 and 727 on October 29, 2010.

13. Defendant filed an Answer and Counterclaim on November 29, 2010.

14. Plaintiff has always stated that a "significant expense" has been incurred in proceeding against the Defendant when Plaintiff is only owed approximately $1,100.00 by the Defendant as an overpayment of child support. Also, according to Plaintiff's Weekly Expense and Earnings Statement dated June 10, 2010, Plaintiff does not work, has over $1,698 per month in expenses including the payment of only $66.00 per week in child support for two teenage children, has basically no assets other than a GMC Yukon worth $35,000.00 (with a loan of $39,000.00 - $450.00

per month), and yet, according to Plaintiff is able to afford a "significant expense" in proceeding against the Defendant.

15. The Chapter 7 Trustee has not filed a complaint against the Defendant pursuant to 11 U.S.C. § 727 and the time to file such complaints expired December 2, 2010. Further, the Defendant has amended her schedules only pursuant to the Chapter 7 Trustee's direction to reflect a time share and insurance policies on the proper schedules, instead of Schedules G and I respectively, as originally listed.

16. On March 14, 2011, this Court entered an Order Denying Plaintiff's Motion to Strike Defendant's Counterclaim.

17. On March 14, 2011, this Court also entered an Order Awarding Defendant Attorney's Fees in the amount of $1,155.00 to be paid within thirty (30) days from the date of the Order. On March 15, this Order was served on Plaintiff's Counsel (See this Court's Docket – Document No. 20).

18. To date, Plaintiff has not complied with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011. Accordingly, the Defendant has no alternative other than to file this instant motion.

19. The Defendant respectfully requests that this Court enter an Order (1) holding the Plaintiff in civil contempt for refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011; (2) compelling Plaintiff to comply, within seven days, with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011, or Plaintiff's complaint against Defendant shall be dismissed; and (3) awarding to the Defendant attorney's fees, costs and disbursements in the amount of $1,100.00, representing 4.0 hours on this motion at a rate of $275.00 per hour (this amount includes 0.5 hours estimated for Court time related to this Motion) to be paid within 30

days, or Plaintiff's complaint against Defendant shall to be dismissed. Annexed hereto as "Exhibit A" are the time records.

WHEREFORE, the undersigned respectfully requests that the Court enter an Order pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. pursuant to Fed. R. Bankr. P. 9014 and 9020:

(a) finding the Plaintiff in civil contempt for refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011;

(b) compelling Plaintiff to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011 and that if Plaintiff does not comply in paying this amount within seven (7) days, then his complaint against Defendant shall be dismissed; and

(c) awarding Defendant attorney's fees for having to make this motion in the amount of $1,100.00, and that if Plaintiff does not comply in paying this amount within thirty (30) days, then his complaint against Defendant shall be dismissed; and

(d) for such other and further relief as to the Court may seem just and proper.

Dated: April 26, 2011
Poughkeepsie, New York

_/s/ Thomas W. Bauer____

Thomas W. Bauer, Esq.
Attorney for Defendant
42 Catharine Street
The Carriage House
Poughkeepsie, NY 12601
(845) 452-5076
Thomas W. Bauer, Esq. (TB8601)

Thomas W. Bauer, Esq.
Attorney for Defendant
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Poughkeepsie, NY 12601
(845) 452-5076
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
---x
In re

DONNA MARIE FRALEIGH, Chapter 7

Debtor. Case No. 10-36282(CGM)

---x

BRIAN FRALEIGH,
Plaintiff, Adv. Proc. No. 10-09091(CGM)

- against -

DONNA MARIE FRALEIGH,
Defendant.
---x

**AFFIRMATION IN SUPPORT OF
MOTION FOR AN ORDER HOLDING PLAINTIFF IN CIVIL CONTEMPT
FOR REFUSING TO COMPLY WITH THIS COURT'S ORDER;
TO COMPEL PLAINTIFF TO COMPLY WITH THIS COURT'S ORDER;
AND REQUEST FOR SANCTIONS PURSUANT TO 11 U.S.C. § 105(a) AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 9014 AND 9020**

Thomas W. Bauer, an attorney duly admitted before this Court, offers the following, upon information and belief, under penalty of perjury:

1. I am a member of the firm Thomas. W. Bauer, Esq., CPA, attorney for the Defendant Donna Marie Fraleigh. I make this Affirmation in support of the request for the entry of an Order Holding Plaintiff in Civil Contempt for Refusing to Comply with this Court's Order; to Compel

Plaintiff to Comply with this Court's Order; and Request for Sanctions pursuant to 11 U.S.C. § 105(a) and Federal Rules of Bankruptcy Procedure 9014 and 9020.

2. The factual statements made herein are true and correct to the best of my knowledge. As to those statements which are alleged upon information and belief, I believe them to be true.

3. This Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. § 1334(b) and the "Standing Order of Referral of Cases to Bankruptcy Judges of the Southern District of New York" dated July 10, 1984 (Ward, Acting C.J.). This matter arises in a case under title 11 and is a core proceeding as provided by 28 U.S.C. § 157(b).

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6. Plaintiff and Defendant have been through a divorce and multiple lengthy support hearings. Upon information and belief, in 2009 Plaintiff had a downward modification petition against Defendant. Plaintiff withdrew his downward modification petition due to the presiding Family Court Judge inferring that an award of approximately $165.00 per week as support would be the result if Plaintiff proceeded. Soon thereafter, Plaintiff re-filed the same downward modification petition in Dutchess County Supreme Court. Plaintiff now only pays $66.00 per week for two teenage children.

7. In 2010, Plaintiff had withdrawn another downward modification petition against Defendant because he failed and refusingd to submit the proper income and expense records to the Defendant and/or the Court.

8. Upon information and belief, in a further subsequent 2010 downward modification petition, Defendant refusingd to respond to legal discovery requests because Lisa Hartley, Esq. was the attorney for the Plaintiff, supported the Plaintiff, and was also to be a witness in the same matter, causing a conflict of interest.

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12. Pursuant to this Court's direction, after the hearing held July 27, 2010, in which this Court granted the 2004 Exam Order and told the parties to work the matter out between them because children were involved, the Defendant approached Plaintiff. However, Defendant was told by Plaintiff's attorney Andrea B. Malin, Esq., that it was too late to work anything out.

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15. Defendant filed an Answer and Counterclaim on November 29, 2010.

16. Plaintiff has always stated that a "significant expense" has been incurred in proceeding against the Defendant when Plaintiff is only owed approximately $1,100.00 by the Defendant as an overpayment of child support. Also, according to Plaintiff's Weekly Expense and Earnings Statement dated June 10, 2010, Plaintiff does not work, has over $1,698 per month in expenses including the payment of only $66.00 per week in child support for two teenage children, has basically no assets other than a GMC Yukon worth $35,000.00 (with a loan of $39,000.00 - $450.00 per month), and yet, according to Plaintiff is able to afford a "significant expense" in proceeding against the Defendant.

17. The Chapter 7 Trustee has not filed a complaint against the Defendant pursuant to 11 U.S.C. § 727 and the time to file such complaints expired December 2, 2010. Further, the Defendant has amended her schedules only pursuant to the Chapter 7 Trustee's direction to reflect a time share and insurance policies on the proper schedules, instead of Schedules G and I respectively, as originally listed.

18. On March 14, 2011, this Court entered an Order Denying Plaintiff's Motion to Strike Defendant's Counterclaim.

19. On March 14, 2011, this Court also entered an Order Awarding Defendant Attorney's Fees in the amount of $1,155.00 to be paid within thirty (30) days from the date of the Order. On March 15, this Order was served on Plaintiff's Counsel (See this Court's Docket – Document No. 20).

20. To date, Plaintiff has not complied with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011. Accordingly, the Defendant has no alternative other than to file the instant motion.

21. The Defendant respectfully requests that this Court enter an Order (1) holding the Plaintiff in civil contempt for willful refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011; (2) compelling plaintiff to comply, within seven days, with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00 dated March 14, 2011, or Plaintiff's complaint against Defendant shall be dismissed; and (3) awarding to the Defendant her attorney's fees, costs and disbursements in the amount of $1,100.00, representing 4.0 hours on this motion at a rate of $275.00 per hour (this amount includes 0.5 hours estimated for Court time related to this Motion) to be paid within 30 days, or Plaintiff's complaint against Defendant shall be dismissed. Annexed hereto as "Exhibit A" are the time records.

WHEREFORE, the undersigned respectfully requests that the Court enter an Order pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9014 and 9020:

(a) finding the Plaintiff in civil contempt for refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011;

(b) compelling Plaintiff to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011, and that if Plaintiff does not comply in paying this amount within seven (7) days, then his complaint against Defendant shall be dismissed; and

(c) awarding Defendant sanctions in the amount of $1,100.00, and that if Plaintiff does not comply in paying this amount within thirty (30) days, then his complaint against Defendant shall be dismissed; and

(d) for such other and further relief as to the Court may seem just and proper.

Dated: April 26, 2011
Poughkeepsie, New York

_/s/ Thomas W. Bauer____
Thomas W. Bauer
Thomas W. Bauer, Esq. (TB8601)

Affirmed this 26th day of April, 2011.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

---x

In re

DONNA MARIE FRALEIGH, Debtor.

Chapter 7

Case No. 10-36282(CGM)

---x

BRIAN FRALEIGH, Plaintiff,

- against -

DONNA MARIE FRALEIGH, Defendant.

Adv. Proc. No. 10-09091

---x

ORDER HOLDING PLAINTIFF IN CIVIL CONTEMPT FOR REFUSING TO COMPLY WITH THIS COURT'S ORDER; TO COMPEL PLAINTIFF TO COMPLY WITH THIS COURT'S ORDER; AND REQUEST FOR SANCTIONS PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 9014 AND 9020

Upon the Motion of the Defendant for an Order Holding Plaintiff in Civil Contempt for Refusing to Comply with this Court's Order; to Compel Plaintiff to Comply with this Court's Order; and Request for Sanctions, and good cause therefore appearing, and upon due notice to all parties and no opposition thereto, it is pursuant to 11 U.S.C. § 105(a) and Federal Rules of Bankruptcy Procedure 9014 and 9020

ORDERED, that the Plaintiff is held in civil contempt for refusing to comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14; and it is further

ORDERED, that the Plaintiff shall comply with this Court's Order Awarding Defendant Attorney's Fees in the amount of $1,155.00, dated March 14, 2011, and that if Plaintiff does not comply in paying this amount within seven (7) days, then his complaint against Defendant shall be dismissed; and it is further

ORDERED, that Defendant is awarded attorney's fees for bringing the instant motion in the amount of $1,100.00, and that if Plaintiff does not comply in paying this amount within thirty (30) days, then his complaint against Defendant shall be dismissed.

Dated: Poughkeepsie, NY
June , 2011

____
U.S. BANKRUPTCY JUDGE

EXHIBIT A

THOMAS W. BAUER
ATTORNEY AT LAW
CERTIFIED PUBLIC ACCOUNTANT
MASTERS IN TAXATION

42 CATHARINE STREET
THE CARRIAGE HOUSE
POUGHKEEPSIE, NY 12601

TEL: (845) 452-5076
FAX: (845) 452-5657

E MAIL: twbauer@frontiernetl.net
WEB SITE: bauerlawcpa.com

April 26, 2011

Donna Marie Fraleigh

Re: Fraleigh v. Fraleigh (In re Donna Marie Fraleigh), 10-09091

INVOICE FOR LEGAL SERVICES RENDERED

All matters relative to the above including, but not limited to the following dates and services:

DATE	DESCRIPTION	HOURS
4/25/11	Research and prepare Contempt Motion	3.2 hrs
4/26/11	File Motion, Memo of Law with Court	0.3 hrs
6/ /11	Court Appearance related to Contempt Motion	0.5 hrs
Totals		4.0 hrs @$275/hr $ 1,100.00